

Plaintiff's Name Edward Androshchuk
 Prisoner No. E-48718
 Institutional Address SVSP, PO BOX 1050
Sol/edad, CA 93960

Number of pages	21
Received on	1/4/2023
Scanned/mailed on	1/6/23 SVSP
by	S.Tomlinson at SVSP
the Northern District of California.	

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

Edward Androshchuk

(Enter your full name)

v.

M-Brewer

J-Hurd

A-Cesares

K-Baliton

(Enter the full name(s) of all defendants in this action)

Case No. 3:23-00094-SK

(Provided by the clerk upon filing)

**COMPLAINT BY A PRISONER
 UNDER THE CIVIL RIGHTS ACT,
 42 U.S.C. § 1983**

Jury Trial Demanded

I. Exhaustion of Administrative Remedies.

You must exhaust available administrative remedies before your claim can go forward. The court will dismiss any unexhausted claims.

- A. Place of present confinement Salinas Valley State Prison
- B. Is there a grievance procedure in this institution? YES NO
- C. If so, did you present the facts in your complaint for review through the grievance procedure?
 YES NO
- D. If your answer is YES, list the appeal number and the date and result of the appeal at each level of review. If you did not pursue any available level of appeal, explain why.

1. Informal appeal: to NO Avail

2. First formal level: to NO Avail

3. Second formal level: To No Avail

4. Third formal level: _____

E. Is the last level to which you appealed the highest level of appeal available to you?

YES NO

F. If you did not present your claim for review through the grievance procedure, explain why.

I Have and Continue to be refused relief

II. Parties.

A. If there are additional plaintiffs besides you, write their name(s) and present address(es).

No

B. For each defendant, provide full name, official position and place of employment.

M. Brewer

J. Hurd

A. Cesares

K. Baliton

III. Statement of Claim.

State briefly the facts of your case. Be sure to describe how each defendant is involved and to include dates, when possible. Do not give any legal arguments or cite any cases or statutes. If you have more than one claim, each claim should be set forth in a separate numbered paragraph.

See Attached Document

IV. Relief.

Your complaint must include a request for specific relief. State briefly exactly what you want the court to do for you. Do not make legal arguments and do not cite any cases or statutes.

See Attached Documents

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on: 01.06.2023
Date

GOING IS TRUE AND CORRECT
Frank
Signature of Plaintiff

1 Edward Androstchuk
2 Salinas Valley State Prison
3 P.O. Box 1050
4 Soledad, CA 93960
5
6

7 UNITED STATES OF DISTRICT COURT
8 Northern District of California
9

10
11 Edward Androstchuk | 42 U.S.C § 1983
12 Plaintiff |
13
14 v. | Jury trial demanded
15 M. Brewer
16 T. Hurd et.al.
17 A. Cesares
18 K. Baliton
19 Defendant § 1
20
21 Plaintiff Edward Androstchuk
22 Alleges:
23
24 I. INTRODUCTION
25
26
27
28

INTRODUCTION

1
2 1. This is a civil rights action filed by
3 Edward Androshchuk, A State Prisoner, for
4 damages under 42 U.S.C § 1983, Alleging
5 excessive use of force and denial of medical
6 care in violation of the Eighth Amendment
7 to the United States Constitution and
8 and confinement in segregation in violation
9 of the Due Process Clause of the Fourteenth
10 Amendment to the Constitution. The Plaintiff
11 also alleges the torts of assault and
12 battery and negligence.
13

14 2. Plaintiff also complaints herein about
15 unlawful Retaliation and Reprisal constituting cruel-
16 and unusual punishment and Due Process, when
17 CDCR violated CDCR own rule's and
18 infringing upon Plaintiff right to access to
19 the Court, thereby rendering administrative
20 remedies unavailable.
21

II JURISDICTION AND VENUE

22 3. This Action is Brought pursuant
23 to 42 USC 1983 therefore Jurisdiction
24 is proper under 28 USC § 1331 and
25 1333.
26
27
28

1
2 III PARTIES
3

4 4. Plaintiff Edward Androshchuk is an
5 Older man from Ukraine, and currently be-
6 Detained by (CDCR) California Department
7 of Correction at Salinas Valley State Pri-
8 son (SVSP) in Soledad, this Act
9 of Violation Happened at MCSF

10 5. At All time Mentioned in this Complaint
11 was a Prisoner within the CDCR system.
12

13 6. At All time Mentioned in this Complaint
14 Defendant Mr. Brewer, was Employed by
15 CDCR and is a Correctional Officer
16

17 7. At All time Mentioned in this compl-
18 aint Defendant J. Hurd, was Employed
19 by CDCR and was a correctional officer
20

21 8. At All time mentioned in this complaint
22 Defendant A. Cesares, was Employed by CDCR
23 and was a correctional Officer
24

25 9. At All time mentioned in this complaint
26 Defendant K. Balition, was Employed by CDCR
27 and was a correctional OFFicer
28
29

1 10 At All Time mentioned in This complaint
2 Each Individual Defendant [S] was Acting
3 under Color of State Law
4

5 #1 At All time mentioned, All of the
6 Defendant[S] and Each of them, are ALSO
7 Sued in their individual Capacities
8 For the Claims alleged in This complaint
9

10 ¶2 Plaintiff is informed and believes on on
11 the Basis of such Information and Belief
12 alleges that each of the Defendant[S]
13 1- through - 9 is responsible in some
14 Manner For the Injuries and Damages
15 alleged in this Complaint the true Name's
16 and Capacities of said Defendant[S] 1-Through -
17 9 are Presently stated Herein.
18

19 ¶3 Plaintiff therefore Sues Said Defendant[S]
20 1-Through 9 by such Said Names and will
21 Not Seek leave to Amend, unless Directed by
22 this Court

23 II. FACTS

24 ¶4 J 8.14.2022 I was Assaulted and Battered
25 By A Cesares, T. Hurd, M. Brew and K. Balliton
26 Specifically A. Cesares Target me for Haras-
27 ment by intentionally searching my cell three times
28

Facts

1 IN one week, cursing at me racial language
2 saying "Fuck you Russian bastards" "you are fucking
3 Caca Roaches" Fuck putin this is America etc
4 ibon the date in contention I had just returned
5 from prison work assignment and clo A. cesares
6 was taken person property out of my cell without
7 cause or reason

8 17. I respectfully asked what is going on in
9 my deep accented tone, and A. cesares said: I'm
10 tried of you in my building move out or this
11 will continue to happen Fucking RAT Russian

12 18. I said man why do you keep harrassing
13 me I did nothing to you clo A. cesares said
14 I hate fucking Russian

15 19. I asked to speak with the supervisor/Sergeant
16 because I was tried of being harrassed Every
17 other day because these correctional Employee CAN
18 Abuse their Duty.

19 20. A. cesares said NO! You Either gonna move out
20 my Building OR I'm gonna keep hitting your cell
21 and TAKEN your shift!

22 21. I said I want to talk to the sergeant I
23 have the right TO speak with your supervisor
24 I than sat on the Bench part of the TABLE and
25 at this point I saw my pet gorbals I was
26 caring for I went to pick it up and A. cesares
27 Rushed toward me and OCsprayed my pet gorbals
28 Than OC spray me directly to the Face without

Facts

1 Cause .
2

3 22. I yelled because of the ocspray that
4 burnt my eyes I stumbled an fell on the
5 table when A. cesares ocsprayed me again
6 then he started yellowing get down
7 mutha Fucc stop resisting me.
8

9 24. I was disabobalated from this attack
10 I didnt understand or do anything which
11 should cause this do to use force this
12 extreme against me .
13

14 25. the alarm sounded , and another
15 correctional employee arrived ~~*T-hurd~~ while
16 I was ocsprayed and now handcuffed A-
17 Cesares told S. Hurd to give me the special
18 treatment what that meant I didnt know , but
19 I soon found out what the special treat was .
20

21 26. T-Hard Squeezed The hand cuff very very tight
22 into my waist as him and M. Brewer escorted
23 me out the Building T-Hard and M.Brewer twist
24 ed and Angaled my Arm in position to cause me
25 extreme pain , I was screaming that I have asthma
and cant really breath they laughed and said
fuck you stupid mutha fucka while pushing my
Arms upward which Bent me over intill I
landed on my Face and stomach .
26

27 27. At this time S. Hurd and M. Brewer started
28 to Beat me , hit me on and in my head T-hard
Did most of the assault and battery , M. Brewer held

Facts

1 my legs and twisted them in painful ways
2 all while I'm shackled and Fully hand cuffed

3 28. Then upon Information And belief K. Balitton
4 joined in on the assault and battery .

5 29. I was having difficulty to breath Due To
6 my asthma attack from the pepper spray . I
7 Heard voices and Felt the Blows From these
8 people , But my main focus was to attempt to
9 control my Breathing , I was in a lot of pain

10 30. I kept screaming I need medical help all
11 while the Beat me, call me Dirty Russian , Bitch
12 and laught at my misoury and pain .

13 31. I didnt know at the time but the
14 Beaten and battery was being Recording on
15 institutional Avss which show them Beaten
16 and hitting me all while hand cuffed as
17 I struggle to breath and asked for help .

18 32. I finally get to see the Doctor/nurse
19 and the correctional officer who just beat me
20 told them I was drunk but, I wasnt my
21 thick accent and the oc spray mixed with sn
22 ot made it hard to speake semi clear .

23 33. I Said I need Asthma pump or treatment
24 which was refused to me by what these
25 correctional officer told the Nurses

26 34. I am being Deprived all the record and
27 names of the nurses and person who dented

me medical Treatment but, my chief issues is the Beaten and illegal attack against my person for no-reason, which is on camera.

Exhaustion of Administrative Remedies:

Plaintiff exhausted his administrative remedies and received a notice which stated they cannot do anything further regarding this issue, therefore exhaustion is completed

1 claim for Relief: First claim
2 Eighth Amendment Violation -
3

4 Cruel and unusual Punishment
5 Excessive use of Force

6 35 The allegations contained in Paragraph's
7 6 through 42, inclusive are hereby incorporated
8 by reference.

9 36 Defendant(s) M. Brewer, J. Hurd, K. Balilin, Acesares
10 IN using Physical Force against the Plaintiff
11 without need or provocation, or in failing to
12 intervene to prevent the misuse of force, were
13 done maliciously and sadistically and constituted
14 Cruel and Unusual Punishment in violation of
15 the Eighth Amendment of the United
16 States Constitution.

17 37 the actions of defendant(s) J. Hurd, Acesares
18 IN using Physical Force against the Plaintiff
19 without need or provocation constituted the
20 tort of assault and battery under the law
21 of California

22 38 the Failure of Defendant(s) to provide
23 Medical examination and Treatment of his
24 battered face, head and body constitutes the
25 tort of Negligence under the law of California

1 39 The Force used by Defendants T-hurd Acesares
2 Mr. Brewer Balton was not used to maintain
3 OR Restore Order But was used maliciously
4 and sadistically For purpose to cause harm
5 To the Plaintiff
6

7 40 Defendant(s) Acted Dispicably knowing fully
8 willfully and maliciously or with reckless
9 or Callous Disrespect disregard For plaintiff's
10 Federally Protected Rights
11

12 41 As a further Direct and Proximate
13 Result of all . the Defendant(s) Actions
14 Therein Asserted Plaintiff Suffered Headaches
15 Nerve damage, PTSD , Physical injuries, Emotion-
16 al and Psychological distress
17

18 42 Plaintiff is entitled to an award
19 of Compensatory and Punitive Damages
20 For Injuries suffered
21
22
23
24
25
26
27
28

SECOND CLAIM FOR RELIEF
Violation of Eighth Amendment -
Deliberate Indifference

43 Plaintiff realleges and incorporate
44 by reference 1 Through 42 Inclusive
45 And Paragraphs 43 through 49 inclusive of
46 the First And Third Claims as it Allege
47 Herin

48 Defendant(s) T hard, m. Brewer Baliton ~~Assesors~~
49 have Denied Plaintiff of his Eighth Amendment
50 right to be free from cruel and unusual Punishment
51 in the Form of Deliberate Indifference to
52 Personal Safety thus Denying a basic human
53 right Guaranteed to prisoners by the
54 United States Constitution

55 The Defendant(s) had a Duty to Protect
56 Plaintiff from Substantial Risk of Serious
57 Harm, thus Exhibited Deliberate indifference
58 to Plaintiff right to Personal Safety, Defendant-
59 S Acted with a culpable state of mind,
60 Subjected him to unnecessary and wanton
61 Infliction of Pain And Injuries

62 Defendant(s) Acted Disparably, knowingly
63 willfully and maliciously or with reckless
64 OR Callous Disrespect disregard For Plaintiff's
65 Federally Protected Rights

1 47 Specifically Defendant(s) were
2 Deliberate indifference to the Plaintiff
3 Personal Safety when the Beat, Assault
4 and Battered him Intentionally knowingly
5 and maliciously on camera while Plaintiff
6 was Handcuff and restraints therefore
7 Deliberately indifferent to Plaintiff Personal
8 Safety and the Eighth Amendment
9 United State Constitution

10 48 As a further Direct and proximate
11 Result of all the Defendant(s) Actions
12 herein Asserted Plaintiff suffered
13 Physical, Emotional and Psychological
14 Injuries

15
16 49 Plaintiff is entitled to an award
17 of compensatory and punitive damages
18 for injuries suffered

19
20

21

22

23

24

25

26

27

28

Third claim for relief Eighth
Amendment violation-Failure to protect

3 50 The Allegations contained in Paragraphs
4 50 through 57 inclusive are hereby Incorporated
5 by Reference.
6

8 51 Defendant(s) J hard, m. Brew k. Balito J A cesares
9 violated Plaintiff's right to be free from
10 Cruel and unusual Punishment guaranteed to
11 Plaintiff by Eighth Amendment of the
12 United States Constitution by intentionally
13 In Manner Described herein and above with
14 knowledge of the risk of serious harm
15 that resulted From their ACTION and
16 omission of Duty

18 52 Defendant(s) conduct violated 42 U.S.C 1983
19 because that conduct constitutes failure to
20 protect Plaintiff from violence and intimidation
21 in violation of the Eighth Amendment
22 right to be free from cruel and unusual
23 punishment

25 53 Defendant[s] Acted Dispicably, knowingly
26 willfully and maliciously or with reckless
27 OR Callous disrespect, disregard for Plaintiff's
28 Federally Protected Rights

1 54 Specifically Defendants Failure to Protect
2 Plaintiff And Subjected Him to unnecessary
3 and Wanton Infliction of Pain, suffering
4 including Psychological distress, in Violation
5 of His Rights under the Eighth Amendment
6
7 55 As a further Direct and proximate
8 Result of all the Defendant (S2 J. hard. m. Brewer
9 Bakken actions there in Asserted Plaintiff
10 suffered unwanted beaten, Asthma ATTACK, Burses
11 Emotional Injuries
12
13 56 Plaintiff is entitled to an award
14 of Compensation and Punitive Damages
15 For Injuries Suffered
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2 WHEREFORE PLAINTIFF EDWARD ANDROSCHEHUK
3 PRAYS FOR THE FOLLOWING RELIEF:

- 4
5 1. Compensatory Damages according to
6 Proof,
7 2. Expunge the Disciplinary conviction
8 Described in this Complaint From Plaintiff
9 Institutional Records
10 3. Award Compensatory damages in the follow-
11 ing amount \$250,000~~s~~ Jointly and Severally
12 against J-hurd, A.Cesares, M.Brewer for
13 causing the Physical Attack, Assault and battery
14 Emotional injuries sustained as a result of
15 their Collective act
16 4. \$50,000~~s~~ Jointly and Severally against
17 J-hurd, A.Cesares, M.Brewer And K.Baliton
18 For refusing to curd ~~or~~ or intervene or stop
19 the battery, Assault & Excessive use of Force
and/or Report against one another
20 5. Punitive Damages according to Proof
21 6. Costs of the Suit and
22 7. Such Further Relief as the court Deems
23 Proper and equitable
24 8. Review the camera as proof For Evidence.

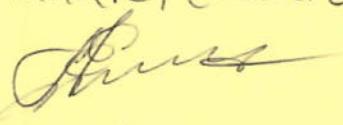
VERIFICATION

I. DECLARE UNDER PENALTY
OF PERJURY under laws of
CALIFORNIA THE FOREGOING is
TRUE AND CORRECT.

Executed at SVSP
in Soledad, CA sent from
Salinas Valley State Prison
on this date: 01/05/2023

Respectfully submitted

ANDROUSCHUK, Edward


In pro-se

CIVIL COMPLAINT